



undertaking, the parties agree Ms. Dwyer and Mr. Carpenter reviewed confidential materials of the plaintiffs, including claim charts prepared by plaintiff.

As part of these discussions the experts informed plaintiffs that they would not be adverse to Ericsson, an intervenor in this case. To effect this, the experts analyzed the user equipment claims but not the base station claims of the patents. The experts also declare they did not provide any FRAND, licensing, or IP portfolio management, strategy, analysis, or policy services. Plaintiff argues this is a red-herring in light of the experts' receipt of confidential information related to the asserted patents and claims.

Some seven weeks prior to the filing of this action, the experts terminated their engagement with plaintiffs and later began an engagement with defendants several months after the filing of the complaint. Upon disclosure, plaintiff brought this motion.

The Court finds that this is a clear case. It was objectively reasonable for plaintiffs to conclude that a confidential relationship existed. Plaintiffs retained the experts for pre-litigation/licensing investigation. This is well understood to involve confidentiality as it often relates to litigation strategy. Likewise, it is clear the experts received confidential or privileged information from plaintiffs. Plaintiffs provided infringement charts--a statement of how plaintiffs believe another party might infringe their patents--generally prepared in anticipation of litigation by or at the direction of attorneys.

While the experts did provide notice of their intention "not to be adverse to Ericsson," this was reasonably understood by Plaintiffs to mean that the experts would not work for Plaintiffs in litigation against Ericsson. It did not provide notice to Plaintiffs that the experts would work for Ericsson against Plaintiffs. The experts still opined for plaintiffs on subject matter closely related to what they would opine upon for defendants, and received confidential

information relating to these opinions. Limiting their work to not include base stations but to include the claims of the same patent directed to customer equipment does not mitigate the harm *to plaintiffs*. Likewise, expressing the intention to avoid being adverse to another party is not a reservation that they might be adverse to plaintiffs.

Therefore, the Court **ORDERS** Ms. Dwyer and Mr. Carpenter are disqualified from further participation as experts in this case.

**SIGNED this 3rd day of September, 2024.**

  
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ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE